

BOISE, MONDAY, MAY 5, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MERCY MEDICAL CENTER,

Petitioner-Appellant,

V.

**ADA COUNTY and the BOARD OF
COUNTY COMMISSIONERS OF ADA
COUNTY,**

Respondent.

Docket No. 34155

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable D. Duff McKee, District Judge.

Hall, Farley, Oberrecht & Blanton, Boise, for appellant.

Ada County Prosecuting Attorney, Boise, for respondent.

Appellant Mercy Medical Center (MMC) appealed from a 2006 decision of Respondent Board of Commissioners of Ada County (Board) denying medical indigency benefits to MMC's patient Elvira Orozco (Orozco) solely on the basis that Orozco was an undocumented Mexican national and therefore could not, as a matter of law, harbor the requisite intent to be a resident of Idaho. Upon a motion filed by Respondent Ada County (County) conceding legal error in the Board's denial exclusively on citizenship grounds, the district court dismissed MMC's appeal without prejudice, vacated the Board's decision, remanded the claim back to the Board for further findings, and awarded MMC attorney fees. MMC appeals to this Court from the district court's order of remand arguing that the Board, by failing to properly address Orozco's claim for medical indigency benefits initially, had waived its opportunity to do so on remand and that Orozco's application should therefore be deemed approved under the penalty provisions of Idaho's medical indigency statutes. The County, on the other hand, maintains that remand is the only permissible relief available under the Idaho Administrative Procedures Act.

BOISE, MONDAY, MAY 5, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

PERRY JOE FOWBLE,)	
)	
Claimant-Respondent,)	
)	
v.)	Docket No. 34151
)	
SNOLINE EXPRESS, INC., Employer, and)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION, Surety,)	
)	
Defendants,)	
)	
and)	
)	
STATE OF IDAHO, INDUSTRIAL)	
SPECIAL INDEMNITY FUND,)	
)	
Defendant-Appellant.)	

Appeal from the Idaho Industrial Commission. Referee Alan Reed Taylor.

Kirkendall Law Office, Boise, for appellant.

Ludwig, Shoufler & Miller, Boise, for respondent.

Perry Fowble filed a claim against the Idaho State Special Indemnity Fund in which he alleged that he is totally and permanently disabled due to the combined effects of his previous injuries and his most recent injury. The referee concluded that Fowble was indeed totally and permanently disabled as an “odd lot” worker, and apportioned liability between his employer’s surety and the State of Idaho Special Indemnity Fund. The Industrial Commission upheld the finding and the Fund accordingly appeals.

BOISE, MONDAY, MAY 5, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

LOCHSA FALLS, L.L.C., an Idaho limited liability company,)
)

Plaintiff-Appellant,)

v.)

Docket No. 34039

STATE OF IDAHO, IDAHO TRANSPORTATION BOARD,)
)

Defendant-Respondent.)

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Michael R. McLaughlin, District Judge.

Wilson & McColl, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Appellant Lochsa Falls, L.L.C. (Lochsa Falls), a developer, filed a complaint against Respondent Idaho Transportation Department (ITD) seeking to have ITD reimburse it for expenses it incurred in constructing a traffic signal as a required safety measure for securing an encroachment permit for a new public road approach. Lochsa Falls argued that the requirement that it construct the traffic signal was a disguised and unconstitutional tax, a taking without just compensation, and a violation of substantive due process and equal protection of the law. The district court dismissed the Lochsa Falls complaint without prejudice for failure to exhaust administrative remedies. The district court further found that the fee was reasonably imposed pursuant to valid police power, was rationally related to public safety, and was not an unconstitutional tax. Lochsa Falls appealed from the district court's order and asks this Court to determine whether the district court erred in dismissing its claim for failure to exhaust administrative remedies and whether ITD had the authority to require that Lochsa Falls construct a traffic signal as a condition for the issuance of the encroachment permit.

BOISE, WEDNESDAY, MAY 7, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRISTINA ALLEN,

Claimant,

v.

ANNE M. REYNOLDS, Employer,

Defendant-Appellant,

and

STATE INSURANCE FUND, Surety,

Defendant-Respondent.

**ANNE M. REYNOLDS, (In the matter of
Christina Allen v. Anne M. Reynolds and
State Insurance Fund),**

Claimant,

v.

STATE INSURANCE FUND,

Defendant.

Docket No. 34369

Appeal from the Idaho Industrial Commission.

Brady Law, Chartered, Boise, for appellant.

Elam Burke, Boise, for respondent.

Why Worry Ranch, LLC (“WWR”) is a horse breeding and training operation wholly owned by Anne Reynolds. In 2004, Christina Allen, an employee of WWR, had her thumb amputated after it was caught in a rope while she was tying a horse. Allen submitted a claim to WWR’s worker’s compensation insurance provider, the State Insurance Fund (“SIF”). SIF refused to cover Allen’s injury, contending that WWR was not covered by worker’s

compensation insurance at the time of her injury. Reynolds contends that a policy was or should have been in effect at the time of the injury. Reynolds had received a policy from SIF for herself, individually and as sole proprietor, in March of 2004. However, Reynolds never completed the steps necessary to have her individual policy transferred to cover WWR. The parties held a hearing before a referee for the Idaho Industrial Commission. The referee found that neither Reynolds nor WWR had worker's compensation coverage on July 14, 2004, when the accident occurred. Reynolds appealed to this Court.

BOISE, WEDNESDAY, MAY 7, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**SAINT ALPHONSUS REGIONAL)
MEDICAL CENTER, INC., an Idaho)
nonprofit corporation (regarding Javier)
Ortega Sandoval),)**

Petitioner-Appellant,)

v.)

**BOARD OF COUNTY COMMISSIONERS)
OF ADA COUNTY,)**

Respondent.)

Docket No. 34233

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. D. Duff McKee, District Judge.

Taylor, Taylor & Pitts, P.A., Twin Falls, for appellant.

Greg Hollis Bower, Ada County Prosecuting Attorney, Boise, for respondent.

While working for Eagle Landscape Contractors in March 2006, Javier Ortega Sandoval, an undocumented immigrant, suffered a stroke. He was taken to St. Alphonsus Regional Medical Center (SARMC) and hospitalized for nearly two months. Sandoval was unable to pay the hospital bills, and his son applied for medical indigency assistance from Ada County.

Initially, the Board of Commissioners of Ada County (the Board) denied the application because it found that Sandoval's son had not cooperated in the investigation and because it concluded that Sandoval could not be a resident of Idaho as he was an illegal immigrant. SARMC then appealed the initial determination. After two hearings on the matter, the Board affirmed its initial determination.

SARMC appealed to the district court, which affirmed the Board's decision. SARMC now appeals to this Court. It argues that the definition of resident under I.C. § 31-3502(12) does not require a patient to be a citizen of the United States and that because Sandoval meets both the time and intent requirements of I.C. § 31-3502(12), the decision of the Board should be reversed.

BOISE, WEDNESDAY, MAY 7, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TIMOTHY A. DUNLAP,)	
)	
Petitioner-Appellant,)	Docket No. 33061
)	
v.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

Appeal from the Sixth Judicial District of the State of Idaho, Caribou County. Hon.
Don L. Harding, District Judge.

Hampton & Elliott, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Timothy Dunlap pled guilty to the first-degree felony murder of Tonya Crane; he was then sentenced to death by the district court on April 20, 1992. Dunlap, in his first appeal to this Court, alleged errors in his first sentencing hearing. In 1993, this Court affirmed Dunlap's original sentence. *State v. Dunlap*, 125 Idaho 530, 873 P.2d 784 (1993). Dunlap then initiated federal proceedings, where his appointed counsel discovered that no post-conviction proceedings had been initiated in state court. In 1994, Dunlap filed his first petition for post-conviction relief. The trial court summarily dismissed his claims and held that they were waived under I.C. § 19-2719(5). In 1998, this Court reversed that decision, and allowed Dunlap's state petition for post-conviction relief of a capital case. *Dunlap v. State*, 131 Idaho 576, 576-77, 961 P.2d 1179, 1179-80 (1998) (holding that Dunlap made a prima facie showing that he did not know or could not

reasonably have known that no petition for post-conviction relief was filed on his behalf prior to the appointment of his current counsel). On remand, prior to the evidentiary hearing on Dunlap's post-conviction petition, the state conceded error in the original sentencing procedures. On January 11, 2002, the district court ordered re-sentencing and denied Dunlap's other post-conviction claims. The State filed, and the district court granted, a motion to stay re-sentencing pending appeal. Dunlap then appealed the denial of his post-conviction claims to this Court, alleging additional claims on appeal. On November 30, 2004, this Court affirmed the district court's decision, declining to address those issues which were raised for the first time on appeal. *Dunlap v. State*, 141 Idaho 50, 106 P.3d 376 (2004).

On January 10, 2005, Dunlap filed a successive petition for post-conviction relief under Idaho Code §§ 19-4901 through -4911, -2719 alleging a violation of his rights under the Idaho and United States Constitutions. Specifically, Dunlap seeks relief on the claims that this Court refused to address in *Dunlap III* because they were raised for the first time on appeal. *Dunlap v. State*, 141 Idaho 50, 56-58, 106 P.3d 376, 382-84 (2005) (holding that the district court did not err when it dismissed Dunlap's first petition for post-conviction relief). The district court, Honorable Don L. Harding presiding, granted the State's motion for summary dismissal. The court held that Dunlap's successive petition for post-conviction relief was untimely under I.C. § 19-2719(5). Dunlap argues that: (1) the district court was without jurisdiction to find Dunlap's successive petition as untimely under I.C. § 19-2719(5) because no valid death sentence was in place until the February 2006 re-sentencing hearing; (2) the district court erred by summarily dismissing his claims because he did present a genuine issue of material fact; and (3) Dunlap's previous attorney was without the authority to waive any of his post-conviction claims. Dunlap appeals to this Court.

BOISE, FRIDAY, MAY 9, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

LARRY G. ANDRUS, SR., and LINDA ANDRUS,)
husband and wife,

Plaintiffs-Counterdefendants-Appellants,)

v.)

SCOTT NICHOLSON and SHERRI)
NICHOLSON, husband and wife;

ELMER STAHLE and JANE DOE STAHLE,)
husband and wife; ROHL HIPWELL and JANE)
DOE HIPWELL, husband and wife; and JOHN)
DOES I through X,)

Defendants-Counterclaimants-Respondents.)

Docket No. 33302

Appeal from the District Court of the Third Judicial District of the State of Idaho, Owyhee County. Hon. Gregory M. Culet, District Judge.

Larry G. Andrus, Sr. and Linda Andrus, Caldwell, appellants pro se.

William F. Yost, Nampa, for respondents Scott Nicholson and Sherri Nicholson.

W. Alan Schroeder, Boise, for respondents Elmer Stahle, Joyce Stahle, Rohl Hipwell, and Faye Hipwell.

Larry and Linda Andrus (Andruses) bring this action alleging that they are entitled to a right of way over real property owned by Scott and Sherri Nicholson

(Nicholsons), Elmer and Joyce Stahle (Stahles), and Rohl and Faye Hipwell (Hipwells) in order to access certain mining claims in Owyhee County.

In 2004, the Andruses were among a group of plaintiffs who brought an action against the Nicholsons in district court. In that case, the Andruses sought a judgment granting them the right to use a roadway that crossed the Nicholsons' property. The Andruses raised several grounds that they argued entitled them a right of way across the Nicholson's property to access their mining claims. The district court in that case granted summary judgment in favor of the Nicholsons and enjoined the Andruses from using the road over the Nicholsons' property.

On October 27, 2005, the Andruses brought this action against the Nicholsons, Stahles, and Hipwells. The Andruses seek a judicial redetermination of their first suit against the Nicholsons and a judgment entitling them and others to a right of way over the Stahles' and Hipwells' properties to access various mining claims. The district court dismissed the Andruses' suit as barred by the earlier action because the issues they seek to litigate were raised or should have been raised in that earlier action.

The Andruses argue on appeal that denying them a right of way across the Nicholsons' land would be an unlawful closure of a public road. They also argue that they were denied a fair trial in their first case before the district court.

The Nicholsons, Stahles, and Hipwells reject the Andruses' arguments, and claim that the district court properly dismissed the instant case because it was precluded by the Andruses' earlier action.

BOISE, FRIDAY, MAY 9, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	
v.)	Docket No. 33312
)	
SARAH MARIE JOHNSON,)	
)	
Defendant-Appellant.)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Blaine County. Hon. R. Barry Wood, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

On the morning of September 2, 2003, Alan and Diane Johnson (the Johnsons) were murdered in their home. The Johnsons' sixteen-year-old daughter, Sarah Johnson, was charged with two counts of first-degree murder. A jury found Sarah guilty of first-degree murder on both counts. The district court sentenced Sarah to concurrent determinate life sentences, plus fifteen-years for the I.C. § 19-2520 firearm enhancement.

Sarah appeals her conviction and raises four issues on appeal. Sarah argues that because aiding and abetting was not charged in the charging document, the district court's instruction to the jury on aiding and abetting constructively amended the charging document and resulted in a fatal variance between the charging document and the jury instructions. Sarah also argues she was deprived of her constitutional right to a unanimous jury verdict because the district court did not instruct the jury it must unanimously agree on whether Sarah actually killed the Johnsons or whether she aided and abetted in the killing of the Johnsons. Finally, Sarah argues her constitutional rights were violated when the district court failed to remove a certain juror from the jury pool or to obtain an unequivocal commitment that the juror would follow all of the court's instructions.